

13F3GUGD BIRNBAUM

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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2
3 GUGGENHEIM CAPITAL, LLC,
3 and GUGGENHEIM PARTNERS, LLC,

4 Plaintiffs,

5 v.

10 CIV 8830 (PGG)

6 CATARINA PIETRA TOUMEI, ET AL.

7 Defendants.

8 -----x

9 March 15, 2011
10 11:00 a.m.

11
12
13 Deposition of DAVID BIRNBAUM, A/K/A
14 DAVID B. GUGGENHEIM, taken by RITA WEEKS, at the
15 offices of McDermott Will & Emery, before Rebecca
16 Forman, a Registered Merit Reporter and Notary
17 Public of the State of New York.

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A P P E A R A N C E S:

McDERMOTT WILL & EMERY
Attorneys for Plaintiffs
RITA WEEKS
MICHAEL SHANAHAN

BEN D. MANEVITZ
Attorney for Defendants Birnbaum and Dabir
International

ALSO PRESENT:
PRYOR CASHMAN
BY: ROBERT RAY

oOo

IT IS HEREBY STIPULATED AND AGREED, by
and between counsel for the respective parties
hereto, that the sealing and filing of the within
deposition be waived; that such deposition may be
signed and sworn to before any officer authorized
to administer an oath; that all objections, except
as to form, are reserved to the time of trial.

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1 THE VIDEOGRAPHER: Good morning. This
2 begins tape number one in the deposition of
3 David Birnbaum for Dabir International in the
4 matter of Guggenheim Capital, et al. v. Catarina
5 Pietra Toumei, et al. This deposition is being
6 taken at 340 Madison Avenue, New York, New York.
7 Today's date is March 15, 2011. The time on the
8 video screen is 10:56 a.m. Will counsel please
9 identify themselves for the record.

10 MS. WEEKS: Rita Weeks for plaintiffs
11 Guggenheim Capital and Guggenheim Partners.

12 MR. SHANAHAN: Michael Shanahan on
13 behalf of the Guggenheim plaintiffs of McDermott
14 Will & Emery.

15 MR. MANEVITZ: Ben D. Manevitz on
16 behalf of Dabir and David Birnbaum.

17 (Witness affirmed)

18 BY MS. WEEKS:

19 Q. Good morning, Mr. Birnbaum. Do you
20 understand that you are here today to testify in
21 behalf of Dabir International as the
22 corporation?

23 Do you understand, sir?

24 MR. MANEVITZ: Do you understand that?

25 MR. RAY: You can answer that

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1 question.

2 A. Yes.

3 Q. Mr. Birnbaum, this is going to be a
4 different type of deposition than the
5 depositions we've conducted previously where
6 you've testified. This is a deposition of the
7 company Dabir International Limited, and you
8 will be testifying on behalf of the corporation
9 and not yourself personally.

10 Do you understand this?

11 MR. MANEVITZ: You can answer that
12 question.

13 A. Yes.

14 Q. Mr. Birnbaum, I am going to hand you
15 what will be marked as Exhibit 1 to Dabir's
16 deposition.

17 (Exhibit 1 marked).

18 Q. This is plaintiffs' rule 30(b)(6)
19 notice of deposition to Dabir International.
20 Have you seen this document before, sir?

21 MR. MANEVITZ: Take the Fifth. Start
22 now, it's easier. Start now. Start now.

23 Q. Sir, what is your answer? Have you
24 seen this document before?

25 A. No.

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1 MR. MANEVITZ: That's not what I said
2 to you.
3 Q. You have not seen this document
4 before?
5 MR. MANEVITZ: I'm advising my client,
6 in order to preserve the privilege, I'm advising
7 you to take the Fifth Amendment.
8 MS. WEEKS: Mr. Manevitz, it's
9 inappropriate for your client to take the Fifth
10 Amendment.
11 MR. MANEVITZ: That's actually not
12 true.
13 A. I omit the Fifth Amendment.
14 Q. Mr. Birnbaum, are you asserting the
15 Fifth Amendment on behalf of yourself personally
16 or on behalf of Dabir International the
17 corporation?
18 MR. MANEVITZ: Personally.
19 MS. WEEKS: Mr. Manevitz, please don't
20 testify for the witness. This isn't your
21 deposition.
22 MR. MANEVITZ: It's not my deposition.
23 MS. WEEKS: We can take yours at a
24 later date.
25 Q. Mr. Birnbaum, can you please answer my
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1 question?
2 A. I omit the Fifth.
3 Q. You plead the Fifth Amendment with
4 respect to Dabir the corporation or with respect
5 to yourself as an individual?
6 A. I omit the Fifth.
7 Q. Mr. Birnbaum, who is Dabir
8 International Limited?
9 A. I omit the Fifth.
10 MR. MANEVITZ: Can I say -- what are
11 you saying? "Omit the Fifth"?
12 THE WITNESS: That's what --
13 MR. MANEVITZ: I just didn't --
14 Q. Mr. Birnbaum, has Dabir International
15 been charged with any crime in any proceeding
16 ever?
17 A. I omit the Fifth Amendment.
18 Q. Mr. Birnbaum, are you aware that Dabir
19 International has not been charged with a crime
20 in relation to the pending criminal case against
21 yourself, Ms. Catarina Toumei, and Mr. Vladimir
22 Zuravel?
23 A. I omit the Fifth.
24 Q. Mr. Birnbaum, isn't it true that Dabir
25 has not been charged with a crime in relation to

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- 1 that case?
- 2 A. I omit the Fifth.
- 3 Q. Isn't it true that Dabir International
- 4 has not been charged in a crime in any case
- 5 ever?
- 6 A. I omit the Fifth.
- 7 Q. Mr. Birnbaum, how would my previous
- 8 question implicate any Fifth Amendment concerns
- 9 with respect to yourself personally?
- 10 A. I omit the Fifth.
- 11 Q. Mr. Birnbaum, how would telling me if
- 12 you understand whether or not Dabir has been
- 13 charged with a crime potentially incriminate
- 14 yourself personally?
- 15 A. I omit the Fifth.
- 16 Q. Mr. Birnbaum, isn't it true that you
- 17 have seen the document that I have marked as
- 18 Exhibit 1 to your deposition?
- 19 A. I omit the Fifth.
- 20 Q. Isn't it true, Mr. Birnbaum, that you
- 21 have been designated to testify on the 43
- 22 deposition topics that are listed in plaintiffs'
- 23 notices of deposition?
- 24 A. I omit the Fifth.
- 25 Q. Mr. Birnbaum, isn't it true that Dabir

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1 International did not submit any objection to
2 plaintiffs' notice of rule 30(b)(6) deposition
3 of Dabir International?
4 A. I omit the Fifth.
5 Q. Mr. Birnbaum, does Dabir International
6 object to plaintiffs' deposition notice?
7 A. I omit the Fifth.
8 Q. Mr. Birnbaum, isn't it true that
9 you've been designated to provide answers on
10 behalf of Dabir for topic one in Exhibit 1?
11 A. I omit the Fifth.
12 Q. Mr. Birnbaum, how was Dabir
13 International formed?
14 A. I omit the Fifth.
15 Q. When was Dabir International formed?
16 A. I omit the Fifth.
17 Q. Does Dabir International currently
18 exist?
19 A. I omit the Fifth.
20 Q. Is Dabir International licensed to do
21 business in any state?
22 A. I omit the Fifth.
23 Q. Is Dabir International licensed to do
24 business in any country in the world?
25 A. I omit the Fifth.

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1 Q. What type of business does Dabir
2 International engage in?
3 A. I omit the Fifth.
4 Q. Does Dabir International sell any
5 products?
6 A. I omit the Fifth.
7 Q. Does Dabir International offer any
8 services?
9 A. I omit the Fifth.
10 Q. Mr. Birnbaum, what did you do to
11 prepare for this deposition today on behalf of
12 Dabir?
13 A. I omit the Fifth.
14 Q. Did you prepare whatsoever for this
15 deposition today?
16 A. I omit the Fifth.
17 Q. Mr. Birnbaum, did you review any
18 documents to prepare for this deposition today?
19 A. I omit the Fifth.
20 Q. Did you speak with any persons to
21 prepare for this deposition today?
22 A. I omit the Fifth.
23 Q. Isn't it true, Mr. Birnbaum, that you
24 are completely unprepared for this 30(b)(6)
25 deposition of Dabir International?

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1 A. I omit the Fifth.
2 Q. Mr. Birnbaum, what other person or
3 persons can testify as to any of the topics
4 listed in plaintiffs' notice of deposition to
5 Dabir?
6 A. I omit the Fifth.
7 MS. WEEKS: Mr. Manevitz, your client
8 Dabir International has the duty to designate a
9 representative who does not have Fifth Amendment
10 issues and can testify as to the deposition
11 topics that your client did not object to.
12 MR. MANEVITZ: Only to the extent
13 there is one available. That one exists. Since
14 there is not one that exists besides
15 Mr. Birnbaum, that's what you get.
16 MS. WEEKS: Actually, that's --
17 MR. MANEVITZ: There is no one who
18 exists who has any knowledge of any of the
19 things listed in your notice except for Mr.
20 Birnbaum.
21 MS. WEEKS: Then your client is under
22 a duty to designate a new person and make them
23 familiar with the topics.
24 MR. MANEVITZ: No. No, I'm sorry,
25 that's just -- I don't know where you're getting

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1 that from. That's a wonderful piece of law that
2 you are making up there.

3 MS. WEEKS: Would you like to provide
4 me with some legal authority that supports your
5 position? Because I'm happy to provide you with
6 ours.

7 MR. MANEVITZ: I'm sorry. There is
8 nobody who has knowledge of the events and
9 circumstances for which you are requesting the
10 information except for Mr. Birnbaum. And that's
11 basically -- he is the 30(b)(6) designee. He is
12 the only one who has knowledge, he's the only
13 one who has any recollection of anything, and
14 that's all there is. He's the guy.

15 MS. WEEKS: Mr. Manevitz, is it your
16 position that Dabir International Limited, your
17 client, who you have filed an appearance for in
18 this case, who you have represented in this
19 case, you did not file any objections to this
20 deposition of this. Is it your position that
21 Dabir International is not under an obligation
22 to produce a designee in response to plaintiffs'
23 30(b)(6) deposition notice who can testify as to
24 the topics listed in that notice?

25 MR. MANEVITZ: It is my position that
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1 the only 30(b)(6) designee that is available in
2 the universe is Mr. Birnbaum.

3 MS. WEEKS: So Mr. Manevitz, am I
4 correct in my understanding that it is your
5 position that Dabir International does not have
6 a duty to educate a different witness who is
7 able to testify as to the topics listed in
8 plaintiffs' deposition notice if Mr. Birnbaum
9 decides to assert the Fifth Amendment?

10 MR. MANEVITZ: I need to think about
11 that for a second.

12 MS. WEEKS: Thank you for thinking
13 about that before we started this deposition and
14 thank you for not thinking about that as early
15 as February 24, 2011, when you received
16 plaintiffs' 30(b)(6) deposition notice.

17 MR. MANEVITZ: I never heard of that
18 particular obligation. That's actually true.
19 To the extent that -- to the extent that
20 educating other witness would affect the same
21 privilege and/or to the extent that having
22 another witness even testify would probably --
23 no -- but certainly educate another witness
24 would probably waive the Fifth Amendment
25 privilege, then there is no obligation on

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1 Mr. Birnbaum to educate anybody.

2 MS. WEEKS: So, Mr. Manevitz, what you
3 are saying is that plaintiffs are not entitled
4 to conduct a 30(b)(6) deposition of any
5 representative on behalf of Dabir?

6 MR. MANEVITZ: No. They are entitled
7 to engage in any 30(b)(6) deposition to the
8 extent that that person has knowledge. The only
9 person with that notice is Mr. Birnbaum. The
10 only person with that knowledge and
11 understanding is Mr. Birnbaum. The only person
12 who knows what happened is Mr. Birnbaum. The
13 only person whose Fifth Amendment rights are
14 implicated is Mr. Birnbaum. That's just -- I'm
15 sorry. But that's -- I really wish I could help
16 you.

17 MS. WEEKS: So Dabir International is
18 under no obligation to educate someone to
19 testify.

20 MR. MANEVITZ: I am unaware of that
21 obligation. If there is such an obligation,
22 feel free to educate me and see what happens.

23 MS. WEEKS: Mr. Manevitz, it is
24 plaintiffs' position that your understanding of
25 the law is incorrect, and that your client Dabir

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1 International, for whom you still represent and
2 have not been granted leave to withdraw from
3 this case from representing, is under an
4 obligation to produce a witness or educate a
5 witness to the extent that Mr. Birnbaum chooses
6 to assert an alleged Fifth Amendment right. And
7 plaintiffs will file a motion with the Court
8 seeking to compel Dabir International to produce
9 such witness, and --

10 MR. MANEVITZ: Plaintiffs have filed
11 many applications with the Court previously, and
12 are free to file whatever application to the
13 Court they wish to in the future. I will, you
14 know, represent Dabir to the best of my ability
15 for as long as I'm still their counsel, and I
16 will respond, having done some research and
17 examine the cases on my own. I'm not going
18 to -- you're welcome to file whatever you want
19 to the Court and I will respond.

20 MS. WEEKS: Do you remember the last
21 time we were here with Mr. Ray and Mr. Birnbaum
22 and we spoke with the Court and the Court --

23 MR. MANEVITZ: That wasn't the last
24 time. It was the time before.

25 MS. WEEKS: Do you remember the
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1 instance where we were here in my firm's New
2 York office and your client pulled the same
3 shenanigans?
4 MR. MANEVITZ: There is no shenanigans
5 here. It is the Fifth Amendment. It's the
6 Constitution.
7 MS. WEEKS: Why did Dabir
8 international not submit any objections to
9 plaintiffs' rule 30(b)(6) deposition notice of
10 Dabir International?
11 MR. MANEVITZ: Dabir International
12 does not have a Fifth Amendment right. Under
13 Braswell at 114, however, Mr. Birnbaum does have
14 a Fifth Amendment right.
15 MS. WEEKS: Mr. Manevitz, please
16 explain to me why the question "Have you
17 received this deposition notice" implicates
18 Mr. Birnbaum's personal Fifth Amendment right.
19 MR. MANEVITZ: I'm sorry? I didn't
20 understand your question. I was not paying
21 attention actually, I'm sorry.
22 All right. That's fine. I know that.
23 MS. WEEKS: Mr. Ray, do you represent
24 Dabir International?
25 MR. RAY: I represent the witness.

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1 MS. WEEKS: Do you represent Dabir
2 International?
3 MR. MANEVITZ: This is not Mr. Ray's
4 deposition.
5 MS. WEEKS: Mr. Ray has chosen to
6 appear at my deposition, and I would like him to
7 answer the question.
8 MR. MANEVITZ: You're welcome to like
9 whatever you'd like.
10 MS. WEEKS: Mr. Manevitz, is your name
11 Mr. Ray?
12 MR. MANEVITZ: My name is not Mr. Ray.
13 MS. WEEKS: Would you let Mr. Ray
14 speak then? Thank you very much.
15 Mr. Ray, do you represent Dabir
16 International Limited?
17 Do you want to --
18 MR. SHANAHAN: I don't think Mr. Ray
19 has made an appearance at this deposition. So
20 if he would remain silent, I would ask him to
21 remain silent throughout the deposition, and you
22 can take his silence as a "no."
23 BY MS. WEEKS:
24 Q. Mr. Birnbaum, is there any other
25 person besides yourself who can speak to any of
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1 the 43 deposition topics in the document that
2 has been marked as Exhibit 1 to your deposition?

3 A. I omit the Fifth.

4 Q. Mr. Birnbaum, did you attempt to find
5 any other person who could testify as to the
6 topics listed in plaintiffs' deposition notice
7 to Dabir International?

8 A. I omit the Fifth Amendment.

9 Q. Why didn't you try to secure the
10 testimony of any other person?

11 A. I omit the Fifth Amendment.

12 Q. Mr. Birnbaum, why did you not seek to
13 educate another person with respect to the
14 topics listed in plaintiffs' deposition notice
15 to Dabir?

16 A. I omit the Fifth.

17 Q. Isn't it true that you made no effort
18 whatsoever to designate any other witness who
19 could speak to these topics?

20 A. I omit the Fifth.

21 Q. Isn't it true that you made no effort
22 to educate any other person in order to speak to
23 these topics?

24 A. I omit the Fifth.

25 Q. Mr. Birnbaum, has Dabir International
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- 1 ever transacted any business?
- 2 A. I omit the Fifth.
- 3 Q. Can you tell me what type of business
- 4 Dabir has transacted?
- 5 A. I omit the Fifth.
- 6 Q. Does Dabir sell any products?
- 7 A. I omit the Fifth.
- 8 Q. Does Dabir sell any services?
- 9 A. I omit the Fifth.
- 10 Q. Mr. Birnbaum, looking at Exhibit 1
- 11 again, deposition topic number one is "Products
- 12 and services advertised, offered for sale,
- 13 distributed or sold by Dabir." What did you do
- 14 to prepare for testifying on this topic today?
- 15 A. I omit the Fifth.
- 16 Q. What documents did you look at to
- 17 prepare for testifying with respect to this
- 18 topic?
- 19 A. I omit the Fifth.
- 20 Q. Again, looking at deposition topic
- 21 number one, what people did you speak to, to
- 22 prepare for testifying on this topic?
- 23 A. I omit the Fifth.
- 24 Q. How long did you spend in preparation
- 25 to testify with respect to topic number one?

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1 A. I omit the Fifth.
2 MR. MANEVITZ: Could I interrupt.
3 Could I get a copy? Just so I can look. I
4 don't have it in front of me. Thanks.
5 MS. WEEKS: Mr. Manevitz, have you
6 seen this document before?
7 MR. MANEVITZ: I'm not being deposed.
8 Have a nice day with that.
9 Q. Mr. Birnbaum, who besides yourself
10 would have information concerning deposition
11 topic number one?
12 A. I omit the Fifth.
13 Q. Mr. Birnbaum, does Dabir International
14 hold any business licenses currently?
15 A. I omit the Fifth.
16 Q. Is Dabir licensed to do business in
17 any state?
18 A. I omit the Fifth.
19 Q. Is Dabir licensed to do business in
20 New York?
21 A. I omit the Fifth.
22 Q. Is Dabir licensed to do business in
23 Delaware?
24 A. I omit the Fifth.
25 Q. Is Dabir licensed to do business in
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- 1 the District of Columbia?
2 A. I omit the Fifth.
3 Q. Has Dabir ever been licensed to do
4 business in the United States?
5 A. I omit the Fifth.
6 Q. Has Dabir ever been licensed to do
7 business in any foreign country?
8 A. I omit the Fifth.
9 Q. Has Dabir ever filed any papers with a
10 U.S. government agency?
11 A. I omit the Fifth.
12 Q. Has Dabir ever filed any papers with
13 any foreign government?
14 A. I omit the Fifth.
15 Q. Mr. Birnbaum, isn't it true that Dabir
16 International has represented to the U.S. patent
17 and trademark office that it is a Delaware
18 corporation in good standing?
19 A. I omit the Fifth.
20 Q. Mr. Birnbaum, what did you do to
21 prepare to testify to deposition topic number
22 two?
23 A. I omit the Fifth.
24 Q. What documents did you look at to
25 prepare for deposition topic number two?

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- 1 A. I omit the Fifth.
2 Q. Who did you speak with to prepare for
3 deposition topic number two?
4 A. I omit the Fifth.
5 Q. How long did you spend preparing to
6 testify towards deposition topic number two?
7 A. I omit the Fifth.
8 Q. Mr. Birnbaum, who else can testify as
9 to deposition topic number two besides yourself
10 on behalf of Dabir International?
11 A. I omit the Fifth.
12 Q. Mr. Birnbaum, what does the word
13 "Dabir" mean?
14 A. I omit the Fifth.
15 Q. Isn't it true, Mr. Birnbaum, that
16 Dabir is a shorthand reference to your name,
17 David Birnbaum?
18 A. I omit the Fifth.
19 Q. Mr. Birnbaum, what is Dabir's current
20 address?
21 A. I omit the Fifth.
22 Q. What is Dabir's current phone number?
23 A. I omit the Fifth.
24 Q. Mr. Birnbaum, can you tell me every
25 address that Dabir has had since its formation?

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- 1 A. I omit the Fifth.
2 Q. Can you tell me every phone number
3 that Dabir has had since its formation?
4 A. I omit the Fifth.
5 Q. Mr. Birnbaum, can you tell me any
6 facsimile number that Dabir International has
7 used since it was formed?
8 A. I omit the Fifth.
9 Q. Mr. Birnbaum, what position do you
10 hold at Dabir International?
11 A. I omit the Fifth.
12 Q. Do you work for Dabir International?
13 A. I omit the Fifth.
14 Q. Do you own Dabir International?
15 A. I omit the Fifth.
16 Q. Isn't it true that you hold yourself
17 out to be the chairman of Dabir International?
18 A. I omit the Fifth.
19 Q. Mr. Birnbaum, I'm now going to give
20 you what will be marked as Exhibit 2 to Dabir
21 International's deposition.
22 (Exhibit 2 marked)
23 Q. This document shows a business card
24 reading Dabir International Limited, David B.
25 Guggenheim. Underneath David B. Guggenheim it
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1 reads chairman.
2 Mr. Birnbaum, is this your business
3 card?
4 A. I omit the Fifth.
5 Q. Mr. Birnbaum, this exhibit shows an
6 address of 525 Ocean Parkway, Suite 1G-H,
7 Brooklyn, New York 11218.
8 Is this Dabir International's address?
9 A. I omit the Fifth.
10 Q. Isn't it true, Mr. Birnbaum, that 525
11 Ocean Parkway, Suite 1G-H, Brooklyn, New York
12 11218 is in fact Dabir International's address?
13 A. I omit the Fifth.
14 Q. Mr. Birnbaum --
15 MR. MANEVITZ: Sorry. I'm sorry. It
16 was supposed to be on vibe.
17 Q. I am going to direct your attention to
18 page two of Exhibit 1. Deposition topic number
19 34. This deposition topic asked Dabir
20 International to be familiar with defendant's
21 corporate organization chart, including the
22 identities of the defendant's officers, owners,
23 employees and agents and their respective job
24 descriptions.
25 Mr. Birnbaum, how did you prepare to
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1 testify with respect to deposition topic number
2 34?

3 It is on page two of that exhibit,
4 sir.

5 MR. MANEVITZ: Page two?

6 MS. WEEKS: I'm sorry.

7 MR. MANEVITZ: Page eight.

8 MS. WEEKS: Yes. Thank you,

9 Mr. Manevitz.

10 A. I omit the Fifth.

11 Q. Isn't it true, Mr. Birnbaum, that you
12 did not prepare to testify on deposition topic
13 number 34 on behalf of Dabir?

14 A. I omit the Fifth.

15 Q. Mr. Birnbaum, what other person would
16 have information concerning deposition topic
17 number 34?

18 A. I omit the Fifth.

19 Q. Mr. Birnbaum, does Dabir currently
20 have any employees?

21 A. I omit the Fifth.

22 Q. Does Dabir currently retain any
23 consultants?

24 A. I omit the Fifth.

25 Q. Or independent contractors?

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- 1 A. I omit the Fifth.
2 Q. Is Dabir currently represented by an
3 attorney?
4 A. I omit the Fifth.
5 Q. Is Miriam Birnbaum involved with
6 Dabir?
7 A. I omit the Fifth.
8 Q. Is defendant Catarina Toumei involved
9 with Dabir?
10 A. I omit the Fifth.
11 Q. Isn't it true that defendant Toumei
12 has been involved in soliciting investments for
13 Dabir?
14 A. I omit the Fifth.
15 Q. Is defendant Vladimir Zuravel involved
16 with Dabir?
17 A. I omit the Fifth.
18 Q. Isn't it true that defendant Zuravel
19 has been involved with soliciting investments
20 for Dabir?
21 A. I omit the Fifth.
22 Q. Is defendant Pichel involved with
23 Dabir?
24 A. I omit the Fifth.
25 Q. Isn't it true that defendant Pichel

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BIRNBAUM

1 has been involved in soliciting investments for
2 Dabir?

3 A. I omit the Fifth.

4 Q. Mr. Birnbaum, is Dabir International
5 familiar with a woman -- I will spell her name
6 because it's a difficult pronunciation. A woman
7 with the name, first name L-y-u-d-n-i-l-a,
8 Grossman, G-r-o-s-m-a-n?

9 A. I omit the Fifth.

10 Q. Isn't it true that Ms. Grossman worked
11 for Dabir in submitting a bid for the company
12 Lukoil in 2004?

13 A. I omit the Fifth.

14 Q. Mr. Birnbaum, is Dabir involved with
15 selling crude oil?

16 A. I omit the Fifth.

17 Q. Is Dabir involved with purchasing
18 crude oil?

19 A. I omit the Fifth.

20 Q. Has Dabir ever been involved with
21 selling crude oil?

22 A. I omit the Fifth.

23 Q. Has Dabir ever been involved with
24 purchasing oil?

25 A. I omit the Fifth.

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1 Q. Mr. Birnbaum, I'm now going to give
2 you a document that will be marked as Exhibit 3
3 to your deposition.

4 (Exhibit 3 marked)

5 Q. Mr. Birnbaum, do you recognize this
6 document?

7 A. I omit the Fifth.

8 Q. Mr. Birnbaum, this document has been
9 marked as Exhibit 3 was produced by you in this
10 litigation. It is Bates number DB-B-000002 to
11 4. This document contains two articles from The
12 New York Times in September of 2004.

13 Are you telling me you are not
14 familiar with this document?

15 A. I'll omit the Fifth.

16 Q. Did you produce this document to
17 plaintiffs during this litigation?

18 A. I am going to omit the Fifth.

19 Q. Mr. Birnbaum, Exhibit Number 3
20 represents that a company named Dabir
21 International placed a bid for the oil company
22 Lukoil. Is this correct?

23 A. I omit the Fifth.

24 Q. Did Dabir in fact place a bid for that
25 oil company in 2004?

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- 1 A. I omit the Fifth.
2 Q. Mr. Birnbaum, on the last page of this
3 exhibit, Bates marked DB-B000004, is the second
4 news story dated September 29, 2004. Have you
5 seen this document before?
6 A. I omit the Fifth.
7 Q. Mr. Birnbaum, the page I just
8 referenced explains that Dabir International is
9 not affiliated with the Guggenheim family. Do
10 you see that, sir?
11 A. I omit the Fifth.
12 Q. Is that a correct statement?
13 A. I omit the Fifth.
14 Q. This document also states that a
15 Mr. David Guggenheim's address is listed as
16 Ocean Parkway in Brooklyn. Do you see that
17 portion, sir?
18 A. I omit the Fifth.
19 Q. Is that a correct statement?
20 A. I omit the Fifth.
21 Q. This article also states that Dabir
22 International is a holding company. Do you see
23 that part in the article, sir?
24 A. I omit the Fifth.
25 Q. Is Dabir International a holding
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BIRNBAUM

1 company?
2 A. I omit the Fifth.
3 Q. Is Dabir International affiliated with
4 my clients, plaintiffs Guggenheim Partners and
5 Guggenheim Capital?
6 A. I omit the Fifth.
7 Q. Isn't it true, sir, that Dabir
8 International has no connection with my clients
9 Guggenheim Partners and Guggenheim Capital?
10 A. I omit the Fifth.
11 Q. Mr. Birnbaum, I'm now going to give
12 you a document that will be marked as Exhibit 4
13 to your deposition.
14 (Exhibit 4 marked)
15 Q. This document is a news story from the
16 Russian Oil and Gas Report dated August 25,
17 2004. Do you recognize this document, sir?
18 A. I omit the Fifth.
19 Q. The title of this article is "David
20 Guggenheim Is Interested in the State Owned
21 Stake in Lukoil." Do you see that portion, sir?
22 A. I omit the Fifth.
23 Q. Mr. Birnbaum, is the information
24 concerning Dabir International in this article
25 correct?

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BIRNBAUM

1 A. I omit the Fifth.

2 Q. Sir, this article describes a

3 Ms. Grossman as a partner with Dabir

4 International with respect to this transaction

5 with Lukoil. Is that a correct representation?

6 A. I omit the Fifth.

7 Q. This article also describes Dabir

8 International as an owner of a bank and a number

9 of oil companies and oil refineries. Is that a

10 correct statement, sir?

11 A. I omit the Fifth.

12 Q. Isn't it true that Dabir International

13 does not own a bank?

14 A. I omit the Fifth.

15 Q. Isn't it true that Dabir International

16 does not own any oil companies?

17 A. I omit the Fifth.

18 Q. Isn't it true, sir, that Dabir

19 International has used the Guggenheim name with

20 respect to this Lukoil transaction in efforts to

21 trade on the good will of my clients Guggenheim

22 Capital and Guggenheim Partners?

23 A. I omit the Fifth.

24 Q. Isn't it true, sir, that Dabir

25 International fraudulently used the Guggenheim

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BIRNBAUM

1 name in connection with this Lukoil transaction?

2 A. I omit the Fifth.

3 Q. Mr. Birnbaum, this article states that
4 Dabir International is not found in any
5 telephone directories and the news reporter
6 could not find any corporate information about
7 this company. Isn't it true that Dabir
8 International is a fraudulent company?

9 A. I omit the Fifth.

10 Q. Isn't it true that Dabir International
11 only exists as a vehicle for you to scam
12 investors?

13 A. I omit the Fifth.

14 Q. Mr. Birnbaum, has Dabir International
15 ever filed any tax returns?

16 A. I omit the Fifth.

17 Q. Mr. Birnbaum, I'm now going to hand
18 you what has been marked as Exhibit 5 to your
19 deposition.

20 (Exhibit 5 marked)

21 Q. This is a news story dated October 1,
22 2004, from the Russian Oil and Gas Report. The
23 headline reads "ConocoPhillips paid \$1.988
24 Billion for a 7.59 Stake in Lukoil." Do you
25 recognize this document, sir?

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BIRNBAUM

- 1 A. I omit the Fifth.
2 Q. Mr. Birnbaum, this document explains
3 that Dabir International was not admitted to the
4 auction for Lukoil. Do you see that part of
5 this exhibit?
6 A. I omit the Fifth.
7 Q. Is that a true statement?
8 A. I omit the Fifth.
9 Q. Did Dabir International in fact follow
10 through with the bid for Lukoil in this
11 transaction?
12 A. I omit the Fifth.
13 Q. This exhibit explains that Dabir
14 International failed to pay the amount required
15 to participate in the auction so it was dropped
16 from participation. Is that true, sir?
17 A. I omit the Fifth.
18 Q. Did Dabir International ever pay any
19 money to participate in the auction for Lukoil?
20 A. I omit the Fifth.
21 Q. Isn't it true, sir, that Dabir
22 International has used the name Guggenheim in
23 connection with the Lukoil transaction?
24 A. I omit the Fifth.
25 Q. Mr. Birnbaum, I'm now going to give

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BIRNBAUM

1 you what has been marked as Exhibit 6 to your
2 deposition.

3 (Exhibit 6 marked)

4 Q. Mr. Birnbaum, do you recognize these
5 documents?

6 A. I omit the Fifth.

7 Q. Mr. Birnbaum, what has been marked as
8 Exhibit 6 are your responses and objections to
9 plaintiffs' first set of requests for production
10 of documents in this lawsuit. Did you serve
11 these to plaintiffs?

12 A. I omit the Fifth.

13 Q. Mr. Birnbaum, in the second portion of
14 the stapled documents that make up this exhibit,
15 there are documents that you, David
16 Guggenheim -- excuse me -- David Birnbaum
17 produced to plaintiffs in this litigation. Do
18 you recognize these documents?

19 A. I omit the Fifth.

20 Q. Mr. Birnbaum, the documents produced
21 to plaintiffs by you that we are looking at the
22 first page shows three business cards. Do you
23 recognize these business cards?

24 A. I omit the Fifth.

25 Q. Do they contain your name on them?

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BIRNBAUM

- 1 A. I omit the Fifth.
2 Q. Do they contain the name David B.
3 Guggenheim?
4 A. I omit the Fifth.
5 Q. Do they contain the term Dabir
6 International Limited?
7 A. I omit the Fifth.
8 Q. Mr. Birnbaum, who is Dabir
9 International Financial Services Limited?
10 A. I omit the Fifth.
11 Q. Is that an alias for Dabir
12 International Limited?
13 A. I omit the Fifth.
14 Q. Is that a separate company?
15 A. I omit the Fifth.
16 Q. Mr. Birnbaum, on page one of this set
17 of documents you're looking at, there is a
18 business card that says Dabir International
19 Limited it also says David B. Guggenheim,
20 chairman, and lists an address on Ocean Parkway
21 in Brooklyn, New York.
22 On the second page of the set of
23 documents we are looking at there is another
24 business card for Guggenheim Trust Company listing
25 David B. Guggenheim as chairman, with the
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1 identical address on Ocean Parkway in Brooklyn,
2 New York, the identical phone and the identical
3 fax number.

4 Do you see these two documents, sir?

5 A. I omit the Fifth.

6 Q. Both of these business cards contain a
7 design at the top that are two interlocking
8 rings. Do you see that portion, sir?

9 A. I omit the Fifth.

10 Q. Why are these business cards
11 identical, sir, when they are for two separate
12 companies?

13 A. I omit the Fifth.

14 Q. Mr. Birnbaum, isn't it true that Dabir
15 International has used the name Guggenheim in
16 connection with offering financial services?

17 A. I omit the Fifth.

18 Q. Mr. Birnbaum, on page one of this set
19 of documents we're looking at, there is a
20 business card. Isn't it true that it reads
21 David Birnbaum Guggenheim, Dabir International
22 Financial Services Limited? It is the bottom
23 business card on the top page of the documents
24 we're looking at.

25 A. I omit the Fifth.

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BIRNBAUM

1 Q. Isn't it true that Dabir International
2 has distributed dozens of these cards containing
3 the term Guggenheim in connection with financial
4 services?

5 A. I omit the Fifth.

6 Q. Mr. Birnbaum, I'm going to point you
7 to page seven of the set of documents we're
8 looking at. Page seven shows letterhead for
9 Dabir International Limited. Do you recognize
10 this document, sir?

11 A. I omit the Fifth.

12 Q. Isn't it true that you produced this
13 letterhead to plaintiffs in this litigation,
14 Mr. Birnbaum?

15 A. I omit the Fifth.

16 Q. Mr. Birnbaum, as part of this
17 letterhead, on the left-hand side it reads David
18 B. Guggenheim, chairman. Do you see that
19 portion of the document, sir?

20 A. I omit the Fifth.

21 Q. Why does it say David B. Guggenheim?

22 A. I omit the Fifth.

23 Q. Why did Dabir International use the
24 name David B. Guggenheim on this letterhead?

25 A. I omit the Fifth.

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BIRNBAUM

1 Q. Isn't it true that Dabir International
2 used the name Guggenheim on this letterhead to
3 deceive consumers?

4 A. I omit the Fifth.

5 Q. Isn't it true that Dabir International
6 used the name Guggenheim on this letterhead in
7 order to defraud consumers?

8 A. I omit the Fifth.

9 Q. Isn't it true that Dabir International
10 has used the name David B. Guggenheim on this
11 letterhead in an intent to trade off the good
12 will belonging to my clients Guggenheim Partners
13 and Guggenheim Capital?

14 A. I omit the Fifth.

15 Q. Mr. Birnbaum, is Dabir International
16 aware of any companies that are doing business
17 under a name containing the word "Guggenheim"?

18 A. I omit the Fifth.

19 Q. Is Dabir International aware of my
20 clients Guggenheim Capital and Guggenheim
21 Partners?

22 A. I omit the Fifth.

23 Q. Isn't it true, sir, that Dabir
24 International is well aware of my clients
25 Guggenheim Partners and Guggenheim Capital?

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BIRNBAUM

- 1 A. I omit the Fifth.
2 Q. Mr. Birnbaum, the name Guggenheim has
3 been a well-known name in the United States for
4 financial services since before 1950, isn't that
5 correct?
6 A. I omit the Fifth.
7 Q. Isn't it correct that the name
8 Guggenheim has been a well-known name in the
9 United States for financial services after 1950?
10 A. I omit the Fifth.
11 Q. Isn't it true that the name Guggenheim
12 is famous in the United States for financial
13 services?
14 A. I omit the Fifth.
15 Q. Isn't it true, sir, that Dabir
16 International has no right to use the name
17 Guggenheim?
18 A. I omit the Fifth.
19 Q. Mr. Birnbaum, I'm going to direct your
20 attention back to Exhibit Number 1, which is
21 plaintiffs' notice of deposition to Dabir
22 International. And I'm looking at deposition
23 topic number 17. Have you read deposition topic
24 number 17, sir?
25 A. I omit the Fifth.

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BIRNBAUM

- 1 Q. You can't tell me whether or not, sir,
2 that you've read deposition topic number 17?
3 A. I omit the Fifth.
4 Q. Isn't it true, sir, that you have in
5 fact read deposition topic number 17?
6 A. I omit the Fifth.
7 Q. Deposition topic number 17 asks for
8 testimony concerning defendant's knowledge of
9 plaintiffs, plaintiffs' products and services,
10 and plaintiffs' Guggenheim marks, including the
11 date on which defendant first learned of
12 plaintiffs' Guggenheim marks and circumstances
13 of how defendant acquired that knowledge.
14 Mr. Birnbaum, did you prepare to
15 testify on this topic today?
16 A. I omit the Fifth.
17 Q. Did you speak with anyone in
18 preparation for preparing to speak on this topic
19 today?
20 A. I omit the Fifth.
21 Q. Did you review any documents in
22 preparation to testify on this topic today?
23 A. I omit the Fifth.
24 Q. Mr. Birnbaum, who can testify as to
25 deposition topic number 17 besides yourself?

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BIRNBAUM

1 A. I omit the Fifth.
2 Q. Isn't it true, Mr. Birnbaum, that
3 Dabir International has done nothing to prepare
4 to testify on topic number 17 today?
5 A. I omit the Fifth.
6 Q. Isn't it true, sir, that Dabir
7 International has not made any efforts to
8 educate any person about deposition topic number
9 17?
10 A. I omit the Fifth.
11 Q. Mr. Birnbaum, isn't it true that Dabir
12 International is involved in purchasing crude
13 oil?
14 A. I omit the Fifth.
15 Q. Mr. Birnbaum, I'm now going to give
16 you what has been marked as Exhibit 7 to your
17 deposition. This document is an e-mail that
18 attaches a letter.
19 (Exhibit 7 marked)
20 Q. Have you seen these documents before,
21 sir?
22 A. I omit the Fifth.
23 Q. The second page of this exhibit is a
24 letter on letterhead for Dabir International
25 Limited, New York, New York, U.S.A. The letter
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BIRNBAUM

1 is dated September 4, 2010. Do you see this
2 information on the document, sir?
3 A. I omit the Fifth.
4 Q. This document is addressed to
5 Petrobras. Do you see that, sir?
6 A. I omit the Fifth.
7 Q. The document also states that it is
8 submitted through a Mr. Stanley Adwell. Who is
9 Mr. Stanley Adwell, sir?
10 A. I omit the Fifth.
11 Q. This letter expresses Dabir
12 International's desire to purchase crude oil.
13 Is this correct, sir?
14 A. I omit the Fifth.
15 Q. This letter states that Dabir
16 International owns the majority of several China
17 national petroleum refineries with the Chinese
18 government. Is that true, sir?
19 A. I omit the Fifth.
20 Q. This letter requests that the
21 recipient send proof of product to a
22 Mr. Vladimir Z. Guggenheim and a Mr. David B.
23 Guggenheim. Do you see that part of the letter,
24 sir?
25 A. I omit the Fifth.

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BIRNBAUM

- 1 Q. Did you send this letter to anybody,
2 sir?
3 A. I omit the Fifth.
4 Q. Did you direct anybody to prepare this
5 letter?
6 A. I omit the Fifth.
7 Q. This letter is signed by a Lady
8 Catarina Pietra Toumei. Do you see that part of
9 the document, sir?
10 A. I omit the Fifth.
11 Q. Isn't it true that you directed --
12 excuse me. Isn't it true that Dabir
13 International directed Lady Catarina Pietra
14 Toumei to prepare this letter?
15 A. I omit the Fifth.
16 Q. This letter states that Ms. Toumei is
17 the legal representative for Mr. Vladimir Z.
18 Guggenheim. Do you see that part of the
19 document, sir?
20 A. I omit the Fifth.
21 Q. Is Ms. Toumei in fact a legal
22 representative for Mr. Vladimir Z. Guggenheim?
23 A. I omit the Fifth.
24 Q. Is Ms. Toumei a legal representative
25 for Dabir International, sir?

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BIRNBAUM

- 1 A. I omit the Fifth.
2 Q. Does Dabir have a legal
3 representative?
4 A. I omit the Fifth.
5 Q. Who is Mr. Stanley Adwell, sir?
6 A. I omit the Fifth.
7 Q. The first page of this exhibit, the
8 e-mail that forwards the letter we've been
9 discussing, is dated September 4, 2010. It is
10 from LadyCatarinaPietra@Gmail.com to an
11 sadwell@ESI-international.com. Do you see that
12 part of the document, sir?
13 A. I omit the Fifth.
14 Q. Ms. Toumei writes: Stanley, please
15 see attached letter of intent for you to forward
16 to the vice chairman of Petrobras. Best
17 regards, Catarina.
18 Do you see that part of the document,
19 sir?
20 A. I omit the Fifth.
21 Q. Did you direct Ms. Toumei to send --
22 A. I omit the Fifth.
23 Q. Excuse me. Did Dabir International
24 direct Ms. Catarina Toumei to send this e-mail
25 and letter to --

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BIRNBAUM

- 1 A. I omit the Fifth.
2 Q. -- to Mr. Stanley Adwell?
3 A. I omit the Fifth.
4 Q. Isn't it true that Dabir International
5 directed Ms. Toumei to send this e-mail and
6 letter to Mr. Stanley Adwell?
7 A. I omit the Fifth.
8 Q. Mr. Birnbaum, looking back at the
9 letter which is page two of this exhibit, how
10 many times is the word "Guggenheim" mentioned?
11 A. I omit the Fifth.
12 Q. Isn't it true, sir, that the term
13 "Guggenheim" is used at least three times in
14 this letter?
15 A. I omit the Fifth.
16 Q. Mr. Birnbaum, did Dabir International
17 ever purchase any oil from Petrobras?
18 A. I omit the Fifth.
19 Q. Did Dabir International ever sell any
20 oil to Petrobras?
21 A. I omit the Fifth.
22 Q. Did Dabir International ever receive
23 any proof of product as a result of this letter?
24 A. I omit the Fifth.
25 Q. Mr. Birnbaum, the September 4 letter
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1 on Dabir International Limited letterhead lists
2 an e-mail address cpcount@AOL.com for the
3 recipient to send documents to. Do you see this
4 part of the document, sir?

5 A. I -- I invoke the Fifth.

6 MR. MANEVITZ: I'm sorry?

7 THE WITNESS: I invoke the Fifth
8 Amendment.

9 MR. MANEVITZ: I think we're done with
10 the tape.

11 MR. SHANAHAN: Off the record.

12 THE VIDEOGRAPHER: This ends tape
13 number one. We're off the record at 11:53.

14 (Discussion off the record)

15 (Recess)

16 THE VIDEOGRAPHER: This begins tape
17 number two in the 30(b)(6) deposition of David
18 Birnbaum for Dabir International. We're on the
19 record at 12:10.

20 MR. SHANAHAN: Mr. Manevitz, before my
21 colleague begins questioning Mr. Birnbaum again,
22 just a couple of objections for the record with
23 respect to the witness's performance.

24 In the first event we believe the
25 witness is over invoking his Fifth Amendment

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1 privilege, especially in light of the 30(b)(6)
2 nature of this deposition. We believe that it is
3 improper that no witness has been produced who can
4 testify on behalf of Dabir, and that plaintiffs
5 are entitled to Dabir's testimony.

6 Because the defendant knew that he was
7 going to take the Fifth Amendment, they had an
8 obligation to designate a different witness who
9 did not have any criminal liability so we could
10 explore some of the corporate issues that are
11 relevant and germane to the civil aspect of this
12 case. And I just want to let you know on the
13 record that unless his performance improves a
14 little bit in that regard, that we are going to
15 file a motion to compel to seek to have his
16 deposition reopened. Counsel for Guggenheim
17 continues to travel up from Washington, D.C. We
18 would probably want to have that next deposition,
19 should the Court order it to be reopened, to occur
20 in Washington, D.C. As well as seeking attorneys'
21 fees and/or sanctions as is applicable or we feel
22 is justified. Thank you.

BY MS. WEEKS:

24 Q. Mr. Birnbaum, I'm now going to give
25 what has been marked Exhibit 8 to your

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BIRNBAUM

1 deposition.

2 (Exhibit 8 marked)

3 Q. Excuse me. To the deposition of Dabir
4 International.

5 MS. WEEKS: Counsel, I'm sorry, I
6 don't have an extra copy, but it is the second
7 amended complaint and all the exhibits.

8 Q. Mr. Birnbaum, the document I just
9 handed you is the second amended complaint that
10 has been filed in this action. Do you recognize
11 this document?

12 A. I invoke my Fifth Amendment.

13 Q. Have you ever seen this document
14 before?

15 A. I invoke my Fifth Amendment.

16 Q. Have you reviewed the contents of this
17 document?

18 A. I invoke my Fifth Amendment.

19 Q. Did you review this document with your
20 attorney?

21 A. I invoke my Fifth Amendment.

22 Q. Did you review this document with any
23 person?

24 A. I invoke my Fifth Amendment.

25 Q. Mr. Birnbaum, on page three of this
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1 exhibit, the second amended complaint, paragraph
2 11 at the bottom, it reads: Defendant Dabir
3 International Limited is a Delaware limited
4 liability company located at 525 Ocean Parkway,
5 Brooklyn, New York 11218. Do you see that part
6 of the document, sir?

7 A. I invoke my Fifth Amendment.

8 Q. Is that a correct statement about
9 Dabir International's address, sir?

10 A. I invoke my Fifth Amendment.

11 MR. MANEVITZ: What paragraph?

12 MS. WEEKS: 11.

13 MR. MANEVITZ: Thank you.

14 Q. Sir, on page four of this document,
15 continuing in paragraph 11 at the end of the
16 paragraph, the second amended complaint alleges
17 that defendant Dabir International is the alter
18 ego of defendant Birnbaum, and that defendant
19 Birnbaum personally and solely owns, controls,
20 directs, authorizes and operates defendant Dabir
21 International.

22 Is that a correct statement, sir?

23 A. I invoke my Fifth Amendment.

24 Q. With respect to this entire document,
25 sir, does Dabir International dispute any of the

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1 allegations contained in it?
2 A. I invoke my Fifth Amendment.
3 Q. Isn't it true, sir, that Dabir
4 International has participated in a scheme with
5 the other defendants named in this case to
6 defraud consumers using Guggenheim marks?
7 A. I invoke my Fifth Amendment.
8 Q. Mr. Birnbaum, directing your attention
9 to page 11 of the second amended complaint,
10 starting at paragraph 34, do you see that
11 portion of the document, sir?
12 A. I invoke my Fifth Amendment.
13 Q. Isn't it true, sir, defendant Dabir
14 International has used the Guggenheim marks to
15 defraud consumers with respect to alleged
16 purchases of crude oil?
17 A. I invoke my Fifth Amendment.
18 Q. Isn't it true, sir, that all of the
19 allegations contained in paragraphs 34 to 39 of
20 the second amended complaint are true?
21 A. I invoke my Fifth Amendment.
22 Q. Mr. Birnbaum, directing your attention
23 to page 13 of the second amended complaint
24 beginning at paragraph 40. Do you see that
25 section of the document, sir?

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BIRNBAUM

- 1 A. I invoke my Fifth Amendment.
2 Q. Mr. Birnbaum, has Dabir International
3 been involved with the purchase of gold under
4 the name Guggenheim?
5 A. I invoke my Fifth Amendment.
6 Q. Isn't true, sir, that Dabir
7 International has participated with the other
8 named defendants in this action in a fraudulent
9 scheme to defraud consumers concerning the
10 purchase of gold?
11 A. I invoke my Fifth Amendment.
12 Q. Isn't it true, sir, that all the
13 allegations contained in paragraphs 40 to 42 of
14 the second amended complaint are true?
15 A. I invoke my Fifth Amendment.
16 Q. Mr. Birnbaum, has Dabir International
17 contacted the Coca-Cola Company?
18 A. I invoke my Fifth Amendment.
19 Q. Isn't it true, sir, that Dabir
20 International has contacted the Coca-Cola
21 Company falsely claiming to be connected to my
22 clients Guggenheim Partners and Guggenheim
23 Capital?
24 A. I invoke my Fifth Amendment.
25 Q. Mr. Birnbaum, directing your attention
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13F3GUGD

BIRNBAUM

1 to page 15 of the second amended complaint,
2 beginning at paragraph 47, is Dabir
3 International involved in the sale of bank
4 guarantees?

5 A. I invoke my Fifth Amendment.

6 Q. Isn't it true, sir, that Dabir
7 International has participated with the other
8 named defendants in this case using the term
9 "Guggenheim" to sell bank guarantees?

10 A. I invoke my Fifth Amendment.

11 Q. Isn't it true, sir, that Dabir
12 International has used the term "Guggenheim
13 Fund" in connection with attempted sales of bank
14 guarantees?

15 A. I invoke my Fifth Amendment.

16 Q. Isn't it true, sir, that Dabir
17 International has used the term "Guggenheim
18 Bank" in connection with the proposed sale of
19 bank guarantees?

20 A. I invoke my Fifth Amendment.

21 Q. Isn't it true, sir, that Dabir
22 International has used the term "Guggenheim
23 Trust" in connection with the alleged sale of
24 bank guarantees?

25 A. I invoke my Fifth Amendment.

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BIRNBAUM

1 Q. Mr. Birnbaum, is it Dabir
2 International's position that anything contained
3 in paragraphs 47 through 56 of the second
4 amended complaint is incorrect?
5 A. I invoke my Fifth Amendment.
6 Q. Isn't it true that plaintiffs'
7 allegations contained in paragraphs 47 to 56
8 concerning bank guarantees the defendants have
9 offered using the name Guggenheim are in fact
10 correct?
11 A. I invoke my Fifth Amendment.
12 Q. Is Dabir International involved in the
13 sale of diamonds, sir?
14 A. I invoke my Fifth Amendment.
15 Q. Isn't it true, sir, that Dabir
16 International has used the term "Guggenheim" in
17 connection with the attempted sale of diamonds?
18 A. I invoke my Fifth Amendment.
19 Q. Isn't it true, sir, that Dabir
20 International has used the term "Guggenheim
21 Fund" in relation to attempted sales of
22 diamonds?
23 A. I invoke my Fifth Amendment.
24 Q. Mr. Birnbaum, directing your attention
25 to paragraphs 57 through 68 of the second

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BIRNBAUM

- 1 amended complaint beginning on page 18 going to
2 page 21. Do you see that section of the second
3 amended complaint, sir?
4 A. I invoke my Fifth Amendment.
5 Q. Isn't it true that Dabir International
6 participated in a scheme with the other named
7 defendants in this case as alleged in those
8 paragraphs towards the sale of diamonds under
9 the term "Guggenheim"?
10 A. I invoke my Fifth Amendment.
11 Q. Mr. Birnbaum, has Dabir International
12 ever contacted Mr. Rupert Murdoch?
13 A. I invoke my Fifth Amendment.
14 Q. Has Dabir International ever
15 instructed any person to contact Mr. Rupert
16 Murdoch on Dabir's behalf?
17 A. I invoke my Fifth Amendment.
18 Q. Sir, I'm now going to give you what
19 has been marked Exhibit 9 to Dabir's deposition.
20 (Exhibit 9 marked)
21 Q. This document is also Exhibit Number
22 23 to plaintiffs' second amended complaint. Do
23 you recognize this document, sir?
24 A. I invoke my Fifth Amendment.
25 Q. Sir, this document is an e-mail dated

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BIRNBAUM

1 September 20, 2010, sent by a Lady Catarina with
2 the e-mail address cpcount@AOL.com. Is Dabir
3 International familiar with that e-mail address,
4 sir?

5 A. I invoke my Fifth Amendment.

6 Q. This e-mail was sent to an Angela
7 Weissert, W-e-i-s-s-e-r-t, for a Mr. Siskind and
8 a Mr. Murdoch. Do you see that portion of the
9 document, sir?

10 A. I invoke my Fifth Amendment.

11 Q. The first sentence of the e-mail
12 states that Mr. David B. Guggenheim and
13 Mr. Vladimir Z. Guggenheim are interested in
14 speaking with you privately and confidentially
15 to discuss investing their money into your
16 companies or other possible ventures such as
17 telecommunications, new technologies and
18 financial instruments.

19 Do you see that part of the document,

20 sir?

21 A. I invoke my Fifth Amendment.

22 Q. Did you prepare this letter, sir?

23 A. I invoke my Fifth Amendment.

24 Q. Did you instruct Ms. Toumei to prepare
25 this letter?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.

2 Q. The second paragraph of this e-mail,
3 sir, states that Mr. David B. Guggenheim and
4 Mr. Vladimir Z. Guggenheim own and run the
5 Guggenheim Foundation, the privately held
6 Guggenheim Bank, Guggenheim Fund, and Dabir
7 International Limited.

8 Do you see that portion of the e-mail,
9 sir?

10 A. I invoke my Fifth Amendment.

11 Q. Is the reference to Mr. David B.
12 Guggenheim a reference to yourself, sir?

13 A. I invoke my Fifth Amendment.

14 Q. Is Dabir International Limited owned
15 by David B. Guggenheim?

16 A. I invoke my Fifth Amendment.

17 Q. Is Dabir International Limited owned
18 by Mr. Vladimir Z. Guggenheim?

19 A. I invoke my Fifth Amendment.

20 Q. Isn't it true, sir, that Dabir
21 International is not in any way affiliated with
22 the Guggenheim Foundation?

23 A. I invoke my Fifth Amendment.

24 Q. Isn't it true, sir, that Dabir
25 International is not connected with the
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BIRNBAUM

1 Guggenheim Bank?
2 A. I invoke my Fifth Amendment.
3 Q. Isn't it true, sir, that Dabir
4 International is not connected with the
5 Guggenheim Fund?
6 A. I invoke my Fifth Amendment.
7 Q. Isn't it true, sir, that the
8 Guggenheim Bank and the Guggenheim Fund do not
9 exist?
10 A. I invoke my Fifth Amendment.
11 Q. Mr. Birnbaum, what is your
12 understanding of Ms. Toumei's intent in
13 preparing this letter and referencing Dabir
14 International?
15 A. I invoke my Fifth Amendment.
16 Q. Was Ms. Toumei attempting to solicit
17 investment on behalf of Dabir International?
18 A. I invoke my Fifth Amendment.
19 Q. Isn't it true, sir, that Dabir
20 International attempted to solicit investments
21 from these people using Guggenheim formative
22 names in order to trade on the good will of my
23 clients?
24 A. I invoke my Fifth Amendment.
25 Q. Is that funny to you, sir? Is it
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BIRNBAUM

1 funny to you?
2 A. I invoke my Fifth Amendment.
3 Q. You don't want to tell me why that's
4 funny?
5 A. I invoke my Fifth Amendment.
6 Q. Mr. Birnbaum, does Dabir International
7 own any trademarks?
8 A. I invoke my Fifth Amendment.
9 Q. Does Dabir International have a
10 well-known reputation in the financial services
11 industry?
12 A. I invoke my Fifth Amendment.
13 Q. Isn't it true, sir, that Dabir
14 International has no reputation whatsoever in
15 the financial services industry?
16 A. I invoke my Fifth Amendment.
17 Q. Does Dabir International have any good
18 will with respect to consumers?
19 A. I invoke my Fifth Amendment.
20 Q. Isn't true, sir, that Dabir
21 International has no good will with respect to
22 consumers?
23 A. I invoke my Fifth Amendment.
24 Q. Mr. Birnbaum, isn't it true that Dabir
25 International has engaged with the other named

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BIRNBAUM

1 defendants in this case collectively and in all
2 of the conduct alleged in plaintiffs' second
3 amended complaint?

4 A. I invoke my Fifth Amendment.

5 Q. Mr. Birnbaum, is Dabir International
6 involved in the sale or purchase of artwork?

7 A. I invoke my Fifth Amendment.

8 Q. Does Dabir International own any
9 specific fine paintings?

10 A. I invoke my Fifth Amendment.

11 Q. Mr. Birnbaum, I'm going to give you
12 what has been marked as Exhibit 10 to your
13 deposition.

14 (Exhibit 10 marked)

15 Q. This is a letter on Dabir
16 International Limited letterhead. Have you seen
17 this document before, sir?

18 A. I invoke my Fifth Amendment.

19 MS. WEEKS: I'm looking for another
20 copy for you, Mr. Manevitz, I know I have one.

21 MR. MANEVITZ: Can I just see his copy
22 for a minute?

23 MS. WEEKS: Sure. Here you go.

24 MR. MANEVITZ: What exhibit is this?

25 MS. WEEKS: 10.

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BIRNBAUM

1 MR. MANEVITZ: Thanks.

2 Q. Mr. Birnbaum, have you seen this
3 document before?

4 A. I omit the Fifth.

5 Q. Mr. Birnbaum --

6 A. I invoke.

7 Q. Did you prepare this document?

8 A. I invoke my Fifth Amendment.

9 Q. Did you direct someone to prepare this
10 document?

11 A. I invoke my Fifth Amendment.

12 Q. This document is a letter dated
13 September 8, 2010, to a Mr. Carlos Slim through
14 a Mr. Michel Youssef, Y-o-u-s-s-e-f. Looks like
15 copies also went to a Mr. Andre Lahoud and
16 Mr. Theodor Pardo. And this letter is signed by
17 a Mr. Vladimir Z. Guggenheim. At the bottom of
18 this letter there is a CC to Mr. David B.
19 Guggenheim, chairman.

20 Have you ever received a copy of this
21 letter, sir?

22 A. I invoke my Fifth Amendment.

23 Q. Mr. Birnbaum, this letter offers a
24 series of oil paintings for sale to a Mr. Carlos
25 Slim on behalf of Dabir International Limited.

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BIRNBAUM

1 Has Dabir International offered oil paintings
2 for sale, sir?

3 A. I invoke my Fifth Amendment.

4 Q. This letter states that the oil
5 paintings come from the private collection of
6 the Guggenheims. Do you see that portion of the
7 letter, sir?

8 A. I invoke my Fifth Amendment.

9 Q. Does Dabir International Limited own
10 any paintings from the private collection of the
11 Guggenheims, sir?

12 A. I invoke my Fifth Amendment.

13 Q. Isn't it true that Dabir International
14 does not own any paintings that are from the
15 private collection of the Guggenheims?

16 A. I invoke my Fifth Amendment.

17 Q. Isn't it true, sir, that Dabir
18 International referenced Guggenheim in this
19 letter in order to capture the interest of
20 potential investors?

21 A. I invoke my Fifth Amendment.

22 Q. Mr. Birnbaum, the first sentence of
23 this letter states, after Dear Mr. Slim, it
24 states: It is with high regard that we would
25 like to offer you a series of oil paintings by

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BIRNBAUM

1 Francisco Jose de Goya y Lucientes, available
2 for purchase from the private collection of the
3 Guggenheims. "The Sacred Heart of Jesus," an
4 oil on canvas by Goya, depicts Jesus holding a
5 heart and surrounded by angels above him and
6 below.

7 Do you see that part of the document,
8 sir?

9 A. I invoke my Fifth Amendment.

10 Q. Do you know anything about a painting
11 titled "The Sacred Heart of Jesus"?

12 A. I invoke my Fifth Amendment.

13 Q. Mr. Birnbaum, I'm now going to give
14 you a document that has been marked Exhibit 11
15 to Dabir's deposition.

16 (Exhibit 11 marked)

17 Q. This document is a letter on
18 letterhead for the Guggenheim Fund, New York,
19 New York Division. Have you seen this letter
20 before, sir?

21 A. I invoke my Fifth Amendment.

22 Q. This letter is dated September 7. It
23 is addressed to a Mr. Carlos Slim through a
24 Mr. Michel Youssef. Did you prepare this
25 letter, sir?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.
2 Q. The letter is signed by a Mr. Vladimir
3 Z. Guggenheim and there is a CC to Mr. David B.
4 Guggenheim, chairman. Did you receive a CC of
5 this letter, sir?
6 A. I invoke my Fifth Amendment.
7 Q. Mr. Birnbaum, comparing what has been
8 marked as Exhibits 10 and 11 to Dabir
9 International's deposition, do you see any
10 differences between the two letters?
11 A. I invoke my Fifth Amendment.
12 Q. Isn't it true that both letters offer
13 for sale a series of oil paintings by Francisco
14 Jose de Goya y Lucientes?
15 A. I invoke my Fifth Amendment.
16 Q. Isn't it true that both letters
17 purport to offer oil paintings for sale from the
18 private collection of the Guggenheims?
19 A. I invoke my Fifth Amendment.
20 Q. Mr. Birnbaum, the first sentence of
21 the letter that has been marked as Exhibit 11
22 reads: It is with high regard that we would
23 like to offer you "The Sacred Heart of Jesus,"
24 an oil on canvas by Francisco Jose de Goya y
25 Lucientes, available for purchase from the

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BIRNBAUM

1 private collection of the Guggenheims.
2 Do you see that sentence, sir?
3 A. I invoke my Fifth Amendment.
4 Q. Isn't the first sentence of the letter
5 marked as Exhibit 11 identical to the first
6 sentence of the letter marked as Exhibit 10?
7 A. I invoke my Fifth Amendment.
8 Q. Mr. Birnbaum, how were Dabir
9 International Limited and the Guggenheim Fund
10 offering the same painting, "The Sacred Heart of
11 Jesus" for sale?
12 A. I invoke my Fifth Amendment.
13 Q. Are there more than one of these
14 paintings?
15 A. I invoke my Fifth Amendment.
16 Q. Isn't it true, sir, that Dabir
17 International Limited and the Guggenheim Fund
18 are both instruments you use in order to defraud
19 consumers?
20 A. I invoke my Fifth Amendment.
21 Q. Mr. Birnbaum, who is Mr. Carlos Slim?
22 A. I invoke my Fifth Amendment.
23 Q. Isn't it true that Dabir International
24 has attempted to enter into business
25 transactions with Mr. Carlos Slim?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.
2 Q. Isn't it true that Dabir International
3 Limited has used the term "Guggenheim" in
4 efforts to enter into business with Mr. Carlos
5 Slim?
6 A. I invoke my Fifth Amendment.
7 Q. Isn't it true, Mr. Birnbaum, that
8 Dabir International has used the term
9 "Guggenheim" in order to trade on the good will
10 of my clients to enter in transactions with
11 Mr. Carlos Slim?
12 A. I invoke my Fifth Amendment.
13 Q. Mr. Birnbaum, does Vladimir Z.
14 Guggenheim work for Dabir International Limited?
15 A. I invoke my Fifth Amendment.
16 Q. Isn't it true, sir, that Mr. Vladimir
17 Z. Guggenheim in fact references defendant
18 Vladimir Zuravel?
19 A. I invoke my Fifth Amendment.
20 Q. Isn't it true that defendant Zuravel
21 works for Dabir International Limited?
22 A. I invoke my Fifth Amendment.
23 Q. Isn't it true, sir, that Dabir
24 International has used the term "Guggenheim" to
25 attempt to sell gold?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.

2 Q. Sir, I'm going to give you a document
3 that has been marked exhibit 12 to Dabir's
4 deposition. Can you please review it and tell
5 me if you recognize this document.

6 (Exhibit 12 marked)

7 A. I invoke my Fifth Amendment.

8 Q. The document marked as Exhibit 12 to
9 Dabir's deposition is an e-mail dated
10 September 7, 2010, sent from
11 LadyCatarinaPietra@Gmail.com to a Robert van
12 Riper. The subject is World Gold Association.
13 Do you see those portions of the document, sir?

14 A. I invoke my Fifth Amendment.

15 Q. Did you direct Ms. Toumei to send this
16 document, sir?

17 A. I invoke my Fifth Amendment.

18 Q. The second sentence in the e-mail from
19 Ms. Toumei at the top of the page, sir, it says:
20 They will be buying from Dabir International
21 Limited. "They" is a reference to the
22 Guggenheims which is stated in sentence one.

23 Do you see that portion of the
24 document, sir?

25 A. I invoke my Fifth Amendment.

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BIRNBAUM

1 Q. Have any companies purchased gold from
2 Dabir International Limited?
3 A. I invoke my Fifth Amendment.
4 Q. Have any individuals purchased gold
5 from Dabir International limited?
6 A. I invoke my Fifth Amendment.
7 Q. Sir, this e-mail requests the
8 recipient to bring SKRs and certificates of
9 hallmarks, to e-mail them to a Mr. Guggenheim.
10 Do you see that portion of the document, sir?
11 A. I invoke my Fifth Amendment.
12 Q. Does the reference to Mr. Guggenheim
13 refer to Mr. David B. Guggenheim, chairman of
14 Dabir International Limited?
15 A. I invoke my Fifth Amendment.
16 Q. Isn't it true, sir, that Dabir
17 International Limited prepared this e-mail using
18 the term "Guggenheim" in order to induce
19 consumers into believing that Dabir
20 International is related to my clients?
21 A. I invoke my Fifth Amendment.
22 Q. Isn't it true, sir, that defendant
23 Catarina Toumei was authorized by Dabir
24 International Limited to use the term
25 "Guggenheim" in order to induce consumers into

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1 gold transactions?

2 A. I invoke my Fifth Amendment.

3 Q. Mr. Birnbaum, has Dabir International
4 directed defendant Toumei to use the term
5 "Guggenheim" in order to enter transactions for
6 Dabir International with respect to oil?

7 A. I invoke my Fifth Amendment.

8 Q. Isn't it true, sir, that Dabir
9 International has in fact directed Ms. Toumei to
10 use the term "Guggenheim" in attempts to enter
11 transactions for Dabir concerning oil?

12 A. I invoke my Fifth Amendment.

13 Q. Mr. Birnbaum, I'm going to give you a
14 document that has been marked Exhibit 13 to
15 Dabir's deposition.

16 (Exhibit 13 marked)

17 Q. It is an eight-page e-mail chain.
18 Have you seen any of these e-mails before, sir?

19 A. I invoke my Fifth Amendment.

20 Q. Did you authorize Ms. Toumei to send
21 any of the e-mails that are contained in this
22 exhibit, sir?

23 A. I invoke my Fifth Amendment.

24 Q. Directing your attention to page six
25 of this document, sir. There is a bolded

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BIRNBAUM

1 portion that is also underlined after the number
2 one. This reads: BRL Trust and Stanley Adwell
3 with the Guggenheims/Dabir International/China
4 National Petroleum Corporation (parent of Petro
5 China Company) and Lady Catarina Pietra Toumei.
6 Do you see that portion of the document, sir?
7 A. I invoke my Fifth Amendment.
8 Q. Do you know what that portion of the
9 document refers to?
10 A. I invoke my Fifth Amendment.
11 Q. Why is Dabir International mentioned
12 in the same sentence with the Guggenheims and
13 Lady Catarina Pietra Toumei?
14 A. I invoke my Fifth Amendment.
15 Q. Isn't it true that Dabir International
16 is mentioned on the portion I directed you to as
17 part of a scheme to defraud consumers using the
18 Guggenheim marks towards the purchase of oil?
19 A. I invoke my Fifth Amendment.
20 Q. Mr. Birnbaum, has Dabir International
21 entered into any contracts with any company
22 named Guggenheim?
23 A. I invoke my Fifth Amendment.
24 Q. Has Dabir International entered into
25 any contracts with any individual with the name

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BIRNBAUM

1 of Guggenheim?

2 A. I invoke my Fifth Amendment.

3 Q. Has Dabir International entered into
4 any contracts with defendant Lady Catarina
5 Pietra Toumei?

6 A. I invoke my Fifth Amendment.

7 Q. Mr. Birnbaum, has Dabir International
8 ever received any money from anybody?

9 A. I invoke my Fifth Amendment.

10 Q. Has Dabir International ever received
11 assets from anybody?

12 A. I invoke my Fifth Amendment.

13 Q. Has Dabir International ever paid
14 money to anybody?

15 A. I invoke my Fifth Amendment.

16 Q. Has Dabir International ever
17 consummated any business transactions?

18 A. I invoke my Fifth Amendment.

19 Q. Has Dabir International incurred any
20 monthly bills?

21 A. I invoke -- I invoke my Fifth
22 Amendment.

23 Q. Does Dabir International have any
24 utility bills?

25 A. I invoke my Fifth Amendment.

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BIRNBAUM

- 1 Q. Does Dabir International pay for
2 Internet service?
3 A. I invoke my Fifth Amendment.
4 Q. Does Dabir International pay for phone
5 service?
6 A. I invoke my Fifth Amendment.
7 Q. Does Dabir International pay for
8 mailing or postage expenses?
9 A. I invoke my Fifth Amendment.
10 Q. Does Dabir International own any real
11 estate, sir?
12 A. I invoke my Fifth Amendment.
13 Q. Does Dabir International own any bank
14 accounts?
15 A. I invoke my Fifth Amendment.
16 Q. Does Dabir International own any
17 investment accounts?
18 A. I invoke my Fifth Amendment.
19 Q. Has Dabir International ever been a
20 party to a lawsuit?
21 A. I invoke my Fifth Amendment.
22 Q. Does Dabir International have an
23 accountant?
24 A. I invoke my Fifth Amendment.
25 Q. Who does Dabir International use to

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1 prepare its taxes?

2 A. I invoke my Fifth Amendment.

3 Q. Mr. Birnbaum, directing your attention
4 again to the plaintiffs' second amended
5 complaint that has been marked as an exhibit for
6 you. The large document. There it is. Exhibit
7 8.

8 Does Dabir International have any
9 defenses to the complaints contained in that
10 document?

11 Does Dabir dispute any claims in there
12 are untrue?

13 Does Dabir agree that everything
14 contained in Exhibit 8, which is plaintiffs'
15 second amended complaint, is true?

16 A. I meet the Fifth. I invoke the Fifth
17 Amendment.

18 Q. What are Dabir International's
19 defenses to the claims in plaintiffs' second
20 amended complaint?

21 Mr. Birnbaum, in what has been marked
22 as Exhibit Number 1 to your deposition,
23 plaintiffs' 30(b)(6) deposition notice of
24 defendant Dabir International Limited, topic
25 number 30 requires Dabir International to

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BIRNBAUM

1 designate someone who can testify as to the
2 allegations set forth in plaintiffs' second
3 amended complaint in this action. That deposition
4 topic is contained on page seven of Exhibit 1.

5 Do you see that portion of plaintiffs'
6 deposition notice of Dabir, sir? Page seven.
7 Topic 30.

8 A. I invoke the Fifth Amendment.

9 Q. Mr. Birnbaum, did you do anything to
10 prepare to testify for Dabir with respect to
11 deposition topic number 30?

12 A. I invoke my Fifth Amendment.

13 Q. Did you speak with anyone in
14 preparation for Dabir to testify to topic 30?

15 A. I invoke my Fifth Amendment.

16 Q. Did you review any documents to
17 prepare to testify for Dabir?

18 A. I invoke my Fifth Amendment.

19 MR. MANEVITZ: You should let her
20 finish the question.

21 Q. Mr. Birnbaum, what other person would
22 have information about plaintiffs' deposition
23 topic number 30 to Dabir International?

24 A. I invoke my Fifth Amendment.

25 Q. Mr. Birnbaum, did you attempt to find
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BIRNBAUM

1 anybody else besides yourself that would have
2 information about deposition topic number 30 for
3 Dabir International?

4 A. I invoke my Fifth Amendment.

5 Q. Mr. Birnbaum, did you make any effort
6 to educate any person about plaintiffs'
7 deposition topic number 30 in preparation to
8 testify for Dabir International?

9 A. I invoke my Fifth Amendment.

10 Q. Sir, did you make any effort at all to
11 prepare Dabir International to give information
12 concerning deposition topic number 30?

13 A. I invoke my Fifth Amendment.

14 Q. Isn't it true, sir, that Dabir
15 International's completely unprepared to testify
16 with respect to plaintiffs' deposition topic
17 number 30?

18 A. I invoke my Fifth Amendment.

19 Q. Mr. Birnbaum, I'm going to point you
20 again to Plaintiffs' Exhibit 1 for the
21 deposition of Dabir International Limited. On
22 pages four through eight there is a list of 43
23 deposition topics for Dabir International. Do
24 you see the list of 43 deposition topics?

25 A. I invoke my Fifth Amendment.

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